

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION at AKRON**

IN RE FIRSTENERGY SOLUTIONS CORP., ET AL., Debtors	Case No. 18-50757-AMK Chapter 11 Honorable Alan M. Koschik, United States Bankruptcy Judge
FIRSTENERGY SOLUTIONS CORP., Plaintiff, V. BLUESTONE ENERGY SALES CORP., Defendant.	 Adversary Proceeding 18-5100

**DEFENDANT’S MOTION TO DISMISS
COUNT I OF THE ADVERSARY COMPLAINT**

Defendant Bluestone Energy Sales Corp. (“Bluestone”) respectfully moves the Court, pursuant to Rule 7012(b) of the Federal Rules of Bankruptcy Procedure and Rule 12(b)(6) of the Federal Rules of Civil Procedure, to Dismiss Count I (Turnover of Estate Property pursuant to 11 U.S.C. § 542(a)-(b)) of the Adversary Complaint filed by Plaintiff FirstEnergy Solutions Corp. (“FES” or “Plaintiff”) for failure to state a claim upon which relief can be granted. In support of this Motion, Bluestone respectfully states as follows:

1. Count I of FES’s Complaint purports to make a claim for turnover pursuant to 11 U.S.C. § 542(a)-(b). Specifically, FES seeks to require Bluestone to “turnover” the Final Payment (approximately \$3,082,397.60) allegedly due under a Coal Purchase Agreement (the “Agreement”) entered into by the parties on or about October 10, 2016.

2. However, because FES can prove no set of facts that the Final Payment constitutes property of the Estate, FES has failed to state a claim upon which relief can be granted.

3. Bluestone is contemporaneously filing a Memorandum Of Law in support of this Motion.

WHEREFORE, Bluestone respectfully requests this Court to enter an Order dismissing Count I of the Complaint filed by FES.

NOTICE

PLEASE TAKE NOTICE that any objection to the relief sought in the foregoing Defendant's Motion To Dismiss Count I Of The Adversary Complaint must be filed within 14 days, unless otherwise Ordered by the Court, from the date of service as set forth below in the Certificate of Service, and that the Court is authorized to grant the relief requested without further notice unless a timely objection is filed.

Respectfully submitted

/s/ Richard A. Getty
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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Defendant's Motion To Dismiss Count I Of The Adversary Complaint was served on this the 28th day of January, 2019, electronically in accordance with the method established under this Court's CM/ECF Administrative Procedures and applicable Standing Order(s), if any, upon the following:

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